

“widow” under 5 U.S.C. § 8101(6).¹ The Office determined that the widow was entitled to compensation benefits pursuant to 5 U.S.C. § 8133 for the death of the employee. On April 5, 2002 the employee’s widow received a compensation payment for the period August 9, 2000 to March 23, 2002 and the Office indicated that the widow would receive payments every 28 days.

On June 12, 2002 appellant filed a claim for compensation (Form CA-5b) on behalf of the employee’s grandson. The form reported that the grandson was a dependent of the employee at the time of death. The Office determined that the grandson was entitled to survivor’s benefits in the amount of 10 percent of the employee’s pay rate. On July 19, 2002 appellant, as guardian of the grandson, received a compensation payment of \$12,171.57, for the period August 9, 2000 to July 13, 2002. Appellant continued to receive compensation payments every 28 days until September 2, 2006.

By decision dated December 18, 2006, the Office determined that appellant was not entitled to benefits under the Federal Employees’ Compensation Act. It found that, under 5 U.S.C. § 8133, a grandchild was not entitled to compensation in the case of death if the employee had a widow.

In a letter dated March 1, 2007, the Office advised appellant of a preliminary determination that an overpayment of \$40,225.20 was created. It found that, for the period August 9, 2000 to September 2, 2006, appellant had received \$40,225.20 in compensation benefits. With regard to fault, the Office made a preliminary determination that appellant was not at fault in creating the overpayment. Appellant was advised to complete the enclosed overpayment recovery questionnaire (OWCP-20) and was advised that failure to submit the requested information would result in denial of waiver of the overpayment.

By decision dated April 19, 2007, the Office finalized the determination that an overpayment of \$40,225.20 was created. It denied waiver of the recovery of the overpayment and indicated that it had not received any financial information.

LEGAL PRECEDENT -- ISSUE 1

With respect to compensation in the case of death, the Act provides the following:

“If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

¹ Docket No. 01-1921 (issued December 20, 2001).

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower or child, as follows --

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents *and grandchildren, if there is no widow*, widower, child or dependent parent as follows --

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, or child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.”² (Emphasis added.)

ANALYSIS -- ISSUE 1

As the above legal precedent indicates, 5 U.S.C. § 8133 provides a comprehensive statutory scheme for the payment of compensation in the case of death causally related to federal employment. The claimant in this case is the guardian of a grandchild of the deceased employee. The statute is quite clear that, in the case of a grandchild, compensation may be payable only “if there is no widow, widower, child or dependent parent.” It is not disputed that in the present

² 5 U.S.C. § 8133(a).

case the employee had a widow and the widow was receiving compensation pursuant to 5 U.S.C. § 8133. Therefore, the grandson of the deceased employee is not entitled to compensation benefits as a result of the death of his grandfather.

The Office calculated that the amount of compensation paid to the guardian of the grandson during the period August 9, 2000 to September 2, 2006 was \$40,225.20. The record contains documentation as to the compensation payments issued and no contrary evidence is contained in the record. The Board therefore finds that an overpayment of \$40,225.20 was created in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act provides: “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience.”³ Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

With respect to the financial information necessary to make an appropriate determination regarding waiver, the Office’s regulations at 20 C.F.R. § 10.438 provide:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of the overpayment would defeat the purpose of the [Act], or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.”

ANALYSIS -- ISSUE 2

In the present case, the Office advised appellant of its preliminary determination as to the overpayment and the need to submit financial information relevant to the waiver issue. Appellant did not submit any relevant financial information. The Office’s regulations at 20 C.F.R. § 10.438 clearly state that failure to submit the requested information will result in denial of waiver. Since appellant did not submit an OWCP-20 or other relevant financial

³ 5 U.S.C. § 8129(b).

information, the Board finds that the Office properly denied waiver of the recovery of the overpayment.

CONCLUSION

The evidence establishes that an overpayment of \$40,225.20 was created from August 9, 2000 to September 2, 2006 because the employee's grandson was not entitled to compensation benefits under 5 U.S.C. § 8133. Appellant did not submit financial information and therefore the Office properly denied waiver of the recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 19, 2007 and December 18, 2006 are affirmed.

Issued: December 7, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board